

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

Docket No. C99-1

**UNITED STATES POSTAL SERVICE  
ANSWER IN OPPOSITION TO MOTION OF UNITED PARCEL SERVICE  
TO COMPEL UNITED STATES POSTAL SERVICE TO ANSWER  
INTERROGATORIES UPS/USPS—50, 52-54, AND 57-58  
(September 16, 1999)**

On August 16, UPS filed interrogatories UPS/USPS—50 through 58. On August 26, the Postal Service filed objections to interrogatories 50, 52-54, and 57-58.<sup>1</sup> On September 9, UPS filed its Motion to Compel United States Postal Service to Answer Interrogatories UPS/USPS-50, 52-54, and 57-58 (hereinafter "Motion"). The Postal Service hereby responds to UPS's Motion.<sup>2</sup>

***Interrogatory UPS/USPS-50.*** Interrogatory 50 subparts (a) and (b) request that the Postal Service offer an opinion as to whether certain federal criminal and other statutes apply to Post E.C.S. transactions.<sup>3</sup> The Postal Service objected to

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<sup>1</sup> United States Postal Service Objection to United Parcel Service Interrogatories UPS/USPS-50, 52-54, 57-58 (filed August 26, 1999) (hereinafter "Objection").

<sup>2</sup> Under Special Rule of Practice 2B, answers in opposition to a participant's motion to compel discovery requests "will be considered supplements to the arguments presented in the initial objection." P.O. Ruling No. C99-1/3, Attachment A. Consistent with Special Rule 2B, the Postal Service will not endeavor to repeat the arguments presented in its initial Objection, but rather will supplement those arguments in order to respond to arguments raised in UPS's Motion to Compel.

<sup>3</sup> A similar interrogatory, UPS/USPS-41, was the subject of P.O. Ruling No. C99-1/9. In that ruling, the Presiding Officer indicated that the UPS and the Postal Service be prepared to discuss interrogatory UPS/USPS-41 at the prehearing conference. During the prehearing conference, the Presiding Officer requested that UPS file an amendment to interrogatory UPS/USPS-41, Tr. 1/39; however, as of the date of this pleading, UPS's

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interrogatory UPS/USPS-50 on the ground of relevance and the ground that this interrogatory requests a legal opinion.

Although UPS claims relevance on the basis that a Postal Service response purportedly would constitute an "admission" regarding the nature of PostECS (Motion at 2), such a response could not be considered an admission of fact regarding the postal or non-postal nature of PostECS, but simply the Postal Service's current legal reasoning (to the extent that positions on these matters have been completely formulated<sup>4</sup>) on the potential applicability of particular statutes. As such, the provision of such a response would not constitute a determinative admission that PostECS is a postal service, but would merely provide the springboard for further legal argument.

The non-factual nature of the requested information runs counter to the fundamental rule of discovery in Commission proceedings that interrogatories shall be "limited to information which appears reasonably calculated to lead to the discovery of admissible evidence." 39 CFR §3001.25(a). UPS can point to no potentially-admissible factual or expert opinion evidence that could be elicited by its question. Moreover, this is not a case of an otherwise-proper interrogatory to which an "answer would involve an opinion or contention that relates to fact or the application of law to fact" (39 CFR §3001.25(c)), but a question whose sole intent is the production exclusively of legal

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motion to compel a response to this interrogatory has not been granted.

<sup>4</sup> In this regard, it should be noted that the legal reasoning of the Postal Service may depend upon input from and consultation with other federal agencies, such as the

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reasoning. As discussed in the Postal Service's objections, to compel production of such attorney work-product would be clearly contrary to Special Rule of Practice 5, which provides that legal argument is not to be received into evidence, and to well-established Commission precedent. Cf. P.O. Ruling No. R97-1/39 (denying a motion to compel the Postal Service to provide legal opinions on insured services). The Postal Service urges the Commission to act consistently with its prior rulings on similar disputes. To do otherwise would be to place the Postal Service in the untenable position of divulging privileged legal analysis to a competitor.

***Interrogatories UPS/USPS-52, 54 and 58.*** Interrogatory UPS/USPS-52 requests whether there have been Post E.C.S. transactions in which the sender and recipient had e-mail addresses containing the top level domains (TLDs) of ".com", ".org", ".net", or ".edu", and for the proportion of Post E.C.S. messages that fall within this category. Interrogatory UPS/USPS-54 asks for the proportions of Post E.C.S. transactions that have involved users and addressees who do not have what UPS terms "foreign top level domains" in their e-mail addresses. Interrogatory UPS/USPS-58 asks for the proportion of Post E.C.S. transactions where the sender had a TLD containing ".com", ".org", ".net", or ".edu" in the domain name of the sender's e-mail address and the message was left to retrieve on servers inside or outside the United States.

The Postal Service objected to interrogatories 52, 54, and 58 on grounds of

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Department of Justice, which is charged with enforcing federal criminal statutes.

relevance and burden. In addition, the Postal Service objected to interrogatory 54 on the additional ground of vagueness, and to interrogatory 58 on the additional grounds of commercial sensitivity and jurisdiction to the extent it requests information about Post E.C.S. transactions initiated by users other than those licensed by the United States Postal Service.<sup>5</sup>

In its Motion, UPS now declares that its formerly-unlimited interrogatory 58 should be narrowed so as to exclude provision of information about foreign posts' transactions. This concession relieves the Postal Service's commercial sensitivity concerns regarding the potential disclosure of information relating to foreign posts in response to interrogatory 58. UPS also attempts to cure the vagueness inherent in its use of the phrase "foreign top level domain" in interrogatory 54 by referring to a prior definition provided by UPS.

While the clarifications provided by UPS are helpful in interpreting these interrogatories, they fall far short of overcoming the Postal Service's objections on the grounds of relevance and burden. As the Postal Service has demonstrated in prior pleadings, these interrogatories proceed from the fallacious assumption that top level domains can be used to segregate PostE.C.S. traffic into the categories of "foreign" and "domestic." The TLD distinctions that UPS makes have absolutely no basis, as

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<sup>5</sup> The interrogatory is not worded to apply to Post E.C.S. messages initiated by Postal Service licensed users, so the Postal Service raised a commercial sensitivity and jurisdiction objection to the extent it has any information about transactions initiated by users licensed by other postal administrations.

indicated by UPS's consistent failure to provide any supporting authority for its proposed groupings. Because the pretext underlying these questions is completely incorrect, there is no factual foundation for them, and they have no bearing on the real matters at issue in this proceeding. The interrogatories certainly will not produce "information regarding the respective origins and points of receipt of PostE.C.S. transactions," as referred to in Presiding Officer's Ruling No. C99-1/9. The Postal Service respectfully directs the Commission's attention to the Postal Service's prior pleadings related to interrogatories UPS/USPS-44, 45, and 47(f) for a more complete exposition and supporting documentation on this point.

Aside from their irrelevance, these three interrogatories would impose an inordinate burden on the Postal Service. UPS does not dispute that there is no mechanism that would facilitate automated searches of sender or recipient e-mail addresses for Post E.C.S. transactions, or that to prepare responses would require extensive and tedious effort by computer programmers, a knowledgeable data base administrator, and a qualified engineer, taking a minimum of six full person weeks. Contrary to UPS's assertion that any burden is justified by the "importance of the jurisdictional issue before the Commission," there is simply no question that this effort to produce such irrelevant information would be unduly burdensome.

***Interrogatory UPS/USPS-53.*** Interrogatory UPS/USPS-53 requests that the Postal Service provide copies of customer feedback and informal interviews to which the Postal Service referred in its response to another question. The Postal Service

objected on grounds that this interrogatory is cumulative and on grounds of commercial sensitivity. Although in the caption and conclusion to its Motion UPS includes this interrogatory as one to which responses should be compelled, UPS make no mention of the interrogatory in the body of the Motion. The Postal Service can only conclude that UPS has withdrawn this question. The Postal Service's objection must be sustained on this basis, as well as the reasons previously provided.

***Interrogatory UPS/USPS-57.*** This interrogatory requests whether the Postal Service sought "the consent of the President" in connection with any agreements between the Postal Service and the International Post Corporation and the foreign posts, or to any rates or prices charged for Post E.C.S. The Postal Service objected on the ground of relevance and on the ground that this interrogatory seeks legal conclusions. UPS now argues that it merely seeks facts which, it further contends, would be relevant to the postal/non-postal and domestic/international character of the service. UPS's latest contentions do nothing to clarify its intent, and do not undercut the legitimacy of the Postal Service's objections. If UPS merely seeks factual information regarding whether the personal involvement of the President was sought on certain occasions, then it should rephrase the question to elicit such facts. As it stands, the interrogatory is couched in statutory language, and any answer to the question would unavoidably involve interpretation of that language. As drafted, the question constitutes an illegitimate attempt to force the Postal Service into defining the concept of "Presidential consent," a phrase which has been the subject of litigation between

UPS and the Postal Service. See *UPS Worldwide Forwarding v. United States Postal Service*, 66 F.3d 621 (3d Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).

### CONCLUSION

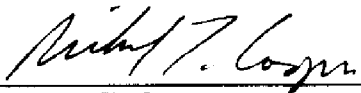
For these foregoing reasons, and the reasons stated in the Postal Service's objections, the Commission should decline to compel answers to interrogatories 50, 52-54, and 57-58, and Motion should be denied. The undersigned counsel has sent a copy of this document to counsel for UPS via facsimile transmission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

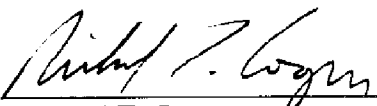
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### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

  
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